

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOHHNY ELLIS,

Petitioner,

v.

No. 21-cv-947-MIS-JHR

ATTORNEY GENERAL OF THE
STATE OF NEW MEXICO,

Respondents.

ORDER TO ANSWER

This matter is before the Court on Petitioner Johnny Ellis's Amended 28 U.S.C. § 2254 Habeas Corpus Petition (Doc. 6) (Petition). Petitioner challenges his state convictions based on, inter alia, due process violations and ineffective assistance of counsel, and sufficiency of the evidence. Having reviewed the claims pursuant to Habeas Corpus Rule 4, the Court will order an answer.

IT IS ORDERED that the Clerk forward copies of this Order and the Petition (Doc. 6)¹ to Respondent Attorney General of the State of New Mexico (AG) at the following address:

Attention F.N.
Paralegal - Habeas Corpus Administrator
New Mexico Office of the Attorney General
Criminal Appeals Division
201 Third St. NW, Suite 300, Albuquerque, NM 87102

It is **FURTHER ORDERED** that the AG must answer the Petition within **60 days** of entry

¹ The Clerk's Office need not print and serve Petitioner's letters (Docs. 7-11), which do not appear to constitute amendments to the Petition. At this stage, the Petition (Doc. 6) is the controlling pleading. If Petitioner wishes to amend his pleading, he must file a motion seeking leave to do so. The AG may access the letters electronically via CM/ECF.

of this Order. The AG's answer must address the merits of each claim and whether the Petitioner has exhausted his state court remedies. If the Petition is mixed, and contains both exhausted and unexhausted claims, the AG should take a position on how to proceed (*i.e.* stay the case while Petitioner exhausts all claims, overlook exhaustion and dismiss on the merits, delete the unexhausted claims, etc). The AG must attach to their answer copies of any filing pertinent to the issue of exhaustion that was filed by Petitioner in the sentencing court, the state district court, the state court of appeals, and the state supreme court, together with copies of all memoranda filed by both parties in support of or in response to those filings. The AG must also attach to the answer copies of all state court post-conviction or appellate proceedings. The answer must describe the procedural history of each claim the AG contends is unexhausted and identify the State procedures that are currently available to Petitioner.

It is **FURTHER ORDERED** that Petitioner may file a reply within fourteen days of the AG's answer.


UNITED STATES MAGISTRATE JUDGE